UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 160	)	
Charged Party	)	
and	)	**Case No. 19-CD-303801**
SSA TERMINALS, LLC	)	
Charging Party	)	
And	)	
PACIFIC MARITIME ASSOCIATION	)	
Intervenor	)	

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION AND INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 19	)	
Charged Party	)	
and	)	
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE 160, LOCAL LODGE 289	)	**Case No. 19-CD-303964**
Charging Party	)	
and	)	
PACIFIC MARITIME ASSOCIATION AND SSA MARINE	)	
Involved Parties	)	

MSC MEDITERRANEAN SHIPPING COMPANY S.A.'S MOTION TO INTERVENE

Pursuant to 29 U.S.C. § 160(b) of the National Labor Relations Act ("NLRA" or "Act"), MSC Mediterranean Shipping Company S.A. ("MSC"), files this Motion to Intervene in the above-captioned cases. MSC has a particularized interest in the outcome of the proceedings that is not represented by any of the existing parties.

I. INTRODUCTION

MSC is a global shipping line that operates a fleet of more than 700 containerships owned or chartered by MSC. As an interested party with an important and unrepresented perspective in this matter, MSC seeks leave to intervene.

SSA Terminals, LLC ("SSAT"), operates Terminal 5 ("T5") in the Port of Seattle. Certain MSC vessels call T5. The dispute in the above-captioned cases is related to which labor union is assigned the activities associated with connecting vessels to electrical shore power—a process known as "cold ironing"—when those vessels call T5. The contemplated cold ironing work is performed *on MSC vessels* and *equipment installed on MSC vessels.*

All members of the Pacific Maritime Association ("PMA"), including SSAT and MSC, are bound to the collective bargaining agreement between PMA and the International Longshore and Warehouse Union ("ILWU"). The relevant collective bargaining agreement, the Pacific Coast Longshore Contract Document ("PCLCD"), requires among other things that the ILWU be assigned "[a]ll on dock activities associated with the plugging and unplugging of vessels for cold ironing or its equivalent." PCLCD § 1.75. By a letter dated September 16, 2022, MSC requested that SSAT honor this obligation for MSC ships calling T5.

As MSC understands, another union, the International Association of Machinists and Aerospace Workers District Lodge 160 ("IAM"), has attempted to claim that same plugging and

unplugging work based on a dissimilar NLRB decision dealing with certain maintenance and repair work performed on SSAT's cargo handling equipment and other on-terminal equipment at T5. IAM has threatened "economic action" against T5 should SSAT honor its contractual obligations to the ILWU and assign to the ILWU the cold-ironing work at T5. That threat directly implicates MSC, because it is MSC's vessels that call T5 and would be at the center of this dispute. The Board should grant MSC's motion to intervene so that MSC can provide a witness to express MSC's preference that the ILWU be granted the cold ironing work at T5 and other evidence in defense of the assignment of the work to the ILWU.

II. RELEVANT FACTUAL BACKGROUND

The Ports of Seattle and Tacoma form the Northwest Seaport Alliance ("NWSA"). T5 is a new terminal in the Port of Seattle. On January 7, 2022, the MSC *Monterey* was the first vessel to call the new terminal. MSC is the only carrier whose vessels have called T5 since it opened.

Shore power is the provision of electricity from the local power grid to meet a ship's energy needs while it is at berth. The practice of connecting a shore power-capable vessel to shore power is known as "cold ironing." This allows the vessel to turn off the diesel engines that normally generate this power when the ship is at sea—or at a berth without shore power.

In order to provide power to ships, substantial electrical infrastructure improvements are required. A typical container ship needs a megawatt or more of power while it is docked, or roughly the equivalent of powering about 800 homes. To provide this power, substantial power distribution infrastructure must be installed on land, including transformers, underground wiring, switchgear, and connection boxes (plug in points) in the wharf. All together, these infrastructure elements are expensive, costing from millions to tens of millions of dollars to install shore power at a containership terminal.

As part of the modernization of T5, the NWSA installed shore power at T5's operational berth. (The other berth remains under construction.) The shore power system at T5 is being partially funded by a special appropriation from the State of Washington.

In addition to needing landside infrastructure available, for a ship to use shore power, it must have special equipment installed to accept shore power. The onboard equipment required to connect to shore power is not standard and is expensive. To install the required equipment on a newbuild vessel can add more than $500,000 in cost, and to retrofit an existing vessel can cost more than $1,000,000. Importantly, the crane, power line, and other equipment that are used in the cold ironing process are MSC's property (or chartered property) and are a permanent part of the physical structure of MSC vessels. MSC has an interest that this property be used properly, safely, and efficiently. As shore power requirements are implemented in other areas, such as California, more and more ships capable of using shore power will call terminals in the Pacific Northwest.

Cold ironing by connecting to shore power is no small feat. Because the voltage required can be extremely dangerous, it requires a team of workers trained to operate the crane that handles the power line, to plug/unplug the power line to the landside infrastructure, and to operate the equipment used to activate/deactivate the shore power. Cold ironing requires constant manning from the time the ship berths and plugs in until it unplugs and leaves—potentially implicating hundreds of manhours. Those manhours and the electricity consumed by a shore power-capable MSC vessel while at berth are paid for by MSC.

The PCLCD assigns to ILWU "[a]ll on dock activities associated with the plugging and unplugging of vessels for cold ironing." *See* PCLCD § 1.75. As indicated above, MSC is a PMA

member and is bound by the PCLCD and each of its terms, including this assignment of cold ironing work to the ILWU.

This notwithstanding, the IAM argues that an award to it of "maintenance and repair work at Terminal 5" includes cold ironing. *See International Association of Machinists and Aerospace Workers*, 369 NLRB No. 126 at *2 (2020). The stakes of this disagreement are especially significant for MSC, considering the work is performed on MSC vessels and using equipment installed on MSC vessels and the IAM's threat to take economic action against SSAT if it is not given the cold ironing work. Without leave to intervene, MSC's unique interests will go unrepresented, and its business will be threatened.

III. ARGUMENT

MSC meets the legal standard for intervention in this dispute. "In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony." 29 U.S.C. § 160(b); *see also* 29 C.F.R. § 102.29 ("The regional director or the administrative law judge, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper."). In deciding a motion to intervene, the Board considers Section 554(c) of the Administrative Procedure Act ("APA"), which provides that the "agency shall give all interested parties opportunity for . . . the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit . . . ." *See Camay Drilling Co.*, 239 NLRB 997, 998 (1978). MSC should be granted leave to intervene here because (1) it is an "interested part[y]"; and (2) its interests will otherwise go unrepresented.

First, MSC has a material interest in this dispute. MSC's vessels (and which union connects those vessels to shore power) are at the center of the dispute. MSC is the only carrier with vessels calling T5. A possible economic action at Terminal 5 would, then, directly harm MSC's business interests as the controversy centers around work aboard, affecting the operation of, and using equipment part of MSC vessels. As a global shipping line, MSC depends on reliable port access to keep supply chains moving.[1]

In addition, the PCLCD, to which MSC is a party, assigns cold ironing at T5 to the ILWU. MSC has an interest in this PCLCD term, and the entirety of the agreement, being honored. This is not to say that carriers will always have an interest in disputes between labor unions and terminal operators. But the following unique factors, in combination, demonstrate MSC's interest in this matter: (1) the power line and crane used to connect MSC vessels to shore power are a permanent part of MSC vessels' structures (making this infrastructure different than just moving or connecting containers which are removable); (2) cold-ironing involves connecting MSC's property to the power substation that is owned by the Northwest Seaport Alliance ("NWSA"), which makes it different than merely loading and discharging of cargo at a terminal leased by a terminal operator; (3) cold-ironing is a dangerous activity that could damage MSC's vessel and equipment and injure its personnel if not done correctly; (4) MSC has an interest in having ILWU workers conduct this dangerous work because the PMA and ILWU operate joint training and dispatching operations that provide MSC confidence that the ILWU workers will be competent and efficient in conducting cold ironing work; (5) MSC has an interest in having a union that is familiar with its vessels and equipment perform the work; and (6) MSC

[1] *See, e.g.*, The Economist, *The Business Costs of Supply Chain Disruption* (Feb. 25, 2021), https://impact.economist.com/perspectives/sustainability/business-costs-supply-chain-disruption-1 (estimating that 2020 supply chain disruptions cost US and European businesses up to four trillion dollars).

has an interest in ensuring compliance with the PCLCD, pursuant to which all PMA members have agreed to assign cold ironing at facilities such as T5 to the ILWU. These interests mean that MSC should have an "opportunity for . . . the submission and consideration of facts [and] arguments" vindicating their interests. *See Camay Drilling Co*., 239 NLRB at 998.

Second, no other party in the dispute adequately represents MSC's interests. The IAM is adverse to MSC, having threatened economic action that would harm MSC. The ILWU is in a collective bargaining relationship with the PMA (of which MSC is a member), but the ILWU has divergent interests. After all, the IAM's threatened economic action is in reality aimed at MSC's vessels and cargo, not the ILWU. SSAT has a contractual relationship with the IAM (for collective bargaining over M&R work), but MSC is not a party to that contract—or any other contract with the IAM—and has no bargaining relationship with the IAM. Thus, SSAT has motivations and incentives different from MSC. Finally, although MSC is a member of PMA, MSC has a unique interest in its own equipment and vessels and its own ability to call T5 safely and efficiently, which is distinct from PMA's interest as the collective bargaining representative of the entire multi-employer collective.

Moreover, MSC has an interest that is unique from PMA and SSAT's for the reasons discussed above. For the sake of the safety of MSC's vessels and crews, it has a unique interest that the workers who handle MSC's shore power equipment be properly trained and supervised. Accordingly, the current parties to the dispute do not adequately represent MSC's interests in ensuring the cold ironing work is performed by the ILWU, avoiding economic action by IAM, and securing the reliable flow of cargo shipped by MSC. Accordingly, MSC's unique perspective would help this Board resolve the dispute, and intervention is proper.

IV. CONCLUSION

For all the foregoing reasons, MSC respectfully requests that the Board grant this motion to intervene in the above-captioned cases.

Dated: October 25, 2022

Respectfully submitted,

/s/ Joseph N. Akrotirianakis

Joseph N. Akrotirianakis
KING & SPALDING LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071
(213) 443-4313
jakro@kslaw.com

Jeremy M. Bylund
KING & SPALDING LLP
1700 Pennsylvania Ave, NW
Suite 900
Washington, DC 20006
(202) 737-0500
jbylund@kslaw.com

Attorneys for MSC Mediterranean Shipping Company SA.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the MSC's Motion to Intervene was filed today, October 25, 2022, using the NLRB's e-Filing system and was served by email upon the following:

David Rosenfeld
WEINBERG, ROGER & ROSENFELD PC
drosenfeld@unioncounsel.net
nlrbnotices@unioncounsel.net

James McMullen
GORDON REES SCULLY MANSUKHANI LLP
jmcmullen@gordonrees.com

Eleanor Morton
Micah Clatterbaugh
LEONARD CARDER, LLP
emorton@leonardcarder.com
mclatterbaugh@leonardcarder.com

Kirsten Donovan
ILWU Coast Longshore Division
kirsten.donovan@ilwu.org

Ronald K. Hooks
National Labor Relations Board, Region 19
Ronald.hooks@nlrb.gov

Jonathan C. Fritts
Geoffrey J. Rosenthal
MORGAN, LEWIS & BOCKIUS LLP
jonathan.fritts@morganlewis.com
geoffrey.rosenthal@morganlewis.com

(b) (6), (b) (7)(C)
Pacific Maritime Association
(b) (6), (b) (7)(C) @pmanet.org

/s/ *Joseph N. Akrotirianakis*
Joseph N. Akrotirianakis